



# Conversations About Municipal Courts & Codes: What's right for your community?

Presented by Englewood Presiding Judge **Joe Jefferson**, Windsor Town Atty **Kim Emil**, & Westminster Associate Judge **Rebekah Watada**

# Popularity of Home Rule in Colorado

---

- 272 Municipalities in Colorado
- 105 Municipalities have adopted home rule
- 3 other Municipalities set to vote on home rule this year



# Home Rule v. Statutory Municipality

- Home Rule reserves “the full right of self government in local and municipal matters.” (Colorado Constitution Art. XX)
  - Retains authority to regulate matters of local and mixed concern but not on issues of exclusive statewide concern (like a felony)
  - May not expressly allow what the state forbids nor forbid what the state expressly allows (City of Aurora v. Martin, 181 Colo. 72,507 P.2d 868 (1973); R.E.N. v. City of Colorado Springs, 823 P.2d 1359 (Colo. 1992))
  - Local, Mixed, or Statewide concern is ultimately determined by the judiciary on an ad hoc basis considering the totality of the circumstances
  - Ability to create and delegate powers and jurisdiction to municipal courts and the method by which judges are selected for the position.
- Statutory municipalities have less flexibility to respond to local concerns, but also do not require as much local policy development. (C.R.S. Titles 13, 31 & 42)

# Courts not of Record v. Courts of Record

Municipal Courts **not of Record** are appealed to the county court of the county in which it sits. \*Trial de novo

# Municipal Courts v. State Courts

- Speedy trial timeline
  - 91 days for Municipal Courts & 182 days for State Courts
- Convenience for parties
  - Location & Accessibility
- Time on dockets to understand the cases before them:
  - local stakeholders
  - impact on the individuals and community
- Victim Advocacy Services (through Police or Prosecution Office or DA)
- Sentencing considerations may be different

# What is your Municipality's Engagement with Criminal Justice?

- Policy considerations for your community expectations:
  - Appropriate alignment of cases and outcomes
  - Public safety
  - No state enforcement/equivalent
  - Ability to jail for warrant or sentencing in local county jail
  - Decriminalization considerations beyond traffic
  - Default procedures or bench warrant
  - Local Problem-solving



# Challenges & Opportunities Ahead

- Public Trust
- Post COVID:
  - Accessibility & virtual options
  - In-custody transports between jails on municipal holds
- Cost increases for due process & inflation
- Legislative mandates and fiscal impacts
  - 48hr bond reform
  - Automatic mandatory record sealing
  - Outstanding Judgment Warrants (OJW)
  - Mandatory personal recognizance for less than \$50 property or misdemeanor
  - Mandatory In-custody court-appointed counsel
  - Debtor-Prison reform



# Covid-19



# New Mandatory Personal Recognizance Policies

- Mandatory PR bonds in cases alleging an offence:
  - of property below \$50, or (**C.R.S. § 16-4-113(2)(a) (2022)**)
  - below the equivalent of a state misdemeanor, or
  - No state equivalent charge, or
  - Cases not heard within 48 hours of notification that:
    - “defendant is being held solely on the basis of a municipal hold”, and **C.R.S. § 13-10-111.5 (2) (2022)**.
    - Sheriff “shall make [them] available to appear in a timely manner before a municipal judge for a hearing...”
    - Does not apply when:
      - Defendant refuses or is unable to attend as a result of substance use, medical or behavioral health emergency,
      - or when an emergency requires Court to close

# Unfunded Mandates

- Outstanding Judgment Warrants (OJW) no longer result in suspension of a driver's license for failure to pay or comply with a traffic case (**HB 21-1314**)
- Automatic Mandatory Record Sealing
  - **SB22-099—"Clean Slate" bill** to allow arrest records not resulting in conviction to be automatically sealed
  - Crimes under Victims Rights Act are not eligible until after a hearing
  - Not eligible if Defendant owes restitution, costs, or fees
- In-Custody Court-Appointed Counsel
  - "At the time of first appearance on a municipal charge, if the defendant is in custody and the charged offense includes a possible sentence of incarceration, the court shall appoint counsel to represent the defendant for purposes of initial appearance. . . the appointment of counsel continues until the defendant is released from custody."  
**C.R.S. § 13-10-114.5(1-2) (2018).**

# Potential Solutions

## Municipal Court Problem-Solving:

- Diversion
- Restorative Justice
- Court Navigation
- Community Service in lieu of costs and fines
- Jail alternatives like Work Release and In-home detention
- Decriminalization and Default Procedures



# Diversion Strategies: Broad Application

- Goal: Minimize contact with the criminal justice system
- Offers alternatives to traditional approach that minimizes appearances, prosecutions, arrests, criminal histories, and incarcerations
- Co-Responder and/or Crisis Intervention strategies that include mental health professionals with and without a police responses to 911 calls
- Prosecutions that result in ultimate dismissal like deferred prosecutions and deferred judgements
- Restorative Justice Strategies
- Problem-solving courts like Teen & Veteran's Courts and programs
- Jail alternatives like Work Release and In-home detention

# Restorative Justice

- Goal: ultimate restoration of the community and the individual through personal accountability and rehabilitation
- Allows victims to play a meaningful role in the justice system and provides responsible parties the opportunities to repair the harm they caused, including restitution
- Ensures public safety in the community and lowers recidivism
- In Englewood: parties have facilitated conversation where a contract is agreed upon to repair the harm
- Rooted in 5 values: Respect, Relationship, Responsibility, Repair, and Reintegration
- Restorative practices can be injected at any step of the legal process

# Court Navigator Programs

- Goal: Help clients satisfy court obligations through increased voluntary compliance to reduce recidivism and costs
- Navigator works privately with the client to understand processes (no legal advice), define barriers to their success, and develop a plan to embrace personal responsibility with appropriate support
- Partners with local agencies to provide resources for mental health and substance abuse counseling as well as other basic needs such as housing, food, and employment
- Enhances public trust in the local justice system
- Saves money for the municipality and their taxpayers



# Community Service in-lieu of fines & costs

- Emphasizes justice and rehabilitation over revenue collection
- May need authorizing ordinance and/or finding of inability to pay
- Lowers recidivism from root social issues:
  - Connects Defendant to positive resources
  - Boosts positive internal motivations through community engagement and relationships





# Decriminalization & Default Procedures

- Decriminalization broadly describes reclassifying an offense and lower possible legal penalties, usually to a max fine, instead of jail where jail is deemed to be inappropriate
- Default processes broadly describes the entry of a judgement against a party due to failure to meet an obligation like respond or failure to appear for court
- Defaults usually assesses a fine on the Defendant in lieu of a bench warrant (such as minor traffic infractions or more as defined by local ordinance) and could proceed to civil collections as authorized



# THANK YOU

Presented by Englewood Presiding Judge **Joe Jefferson**, Windsor Town Attorney **Kim Emil**, & Westminster Associate Judge **Rebekah Watada**



# THANK YOU FOR ATTENDING

## Please don't forget to rate the session on the CML Conference App

## Go to session & click on survey